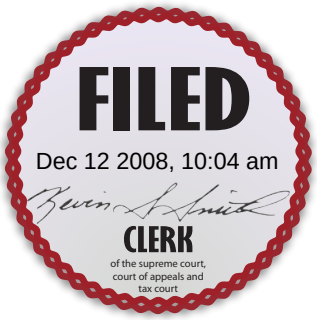

ATTORNEY FOR APPELLANT:

EVELYN HANSEN-DAVIS
Evansville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

ANTHONY D. NORMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A04-0805-CR-290
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable David D. Kiely, Judge
Cause No. 82C01-0710-FD-1160

December 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Anthony D. Norman appeals the sentence imposed after he was convicted, in a trial to the bench, of one count of theft, as a class D felony.

We affirm.

ISSUE

Whether the one-year executed sentence is inappropriate.

FACTS

Early on the morning of October 14, 2007, Courtney Andrews was looking out her living room window when she saw Norman walking South on Old State Road in Vanderburgh County. Norman walked "onto [her] property, and toward [her] barn, . . . grabbed [her] bike and took off and headed South on Old State Road." (Tr. 10). Andrews called the police, reported that her bike had been stolen, and described Norman. A responding officer located Norman riding a bicycle "about a mile from where [Andrews] lived give or take." (Tr. 21). Norman told the officer "he took the bike . . . to get him to where he needed to go and that he had planned on returning it." (Tr. 18, 19). Norman was taken to jail, and the officer returned the bicycle to Andrews.

On October 15, 2007, the State charged Norman with one count of theft, as a class D felony. On January 24, 2008, Norman waived his right to a jury trial. On February 29, 2008, a bench trial was held. Andrews and the officer testified to the above. Andrews also testified that she did not give Norman permission to take the bicycle, and that the day after Norman took her bicycle, "he came by [her] house" and "apologized for taking

the bike." (Tr. 12). Norman testified that he was walking by Andrews' house, "took her bike and rode off her property heading towards" his home. (Tr. 24). Norman testified that he had admitted to the officer that he "took [the bicycle] out of this lady's yard." (Tr. 25). Norman testified that he intended to return the bicycle "as soon as [he] got home." (Tr. 26). He also admitted that at the time he took the bicycle, he was on parole.

The trial court found Norman guilty of theft and ordered a pre-sentence investigation report. The sentencing hearing was held on April 16, 2008. Norman asked the trial court to enter judgment on conversion as a class A misdemeanor. The State noted Norman's two prior felony convictions, one for dealing in cocaine as a class B felony, and the other for dealing in marijuana, as a class D felony; and that Norman was on parole at the time of the instant offense. The State asked that judgment of conviction be entered as a class D felony and that a sentence greater than the advisory be imposed.

The trial court noted that it had reviewed the PSI[1] and considered the arguments. It found "aggravating circumstances to be the defendant's prior criminal history in a conviction for Dealing in Marijuana in 9910FD862, a conviction in Dealing in Cocaine in 204FA370," and that Norman "was on parole for that offense when he committed this crime." (Tr. 45-46). It found as mitigating circumstances that the bicycle's value was $50.00, and that Norman waived his right to a jury trial. It then ordered Norman to serve a one-year executed sentence at the Department of Correction.

DECISION

[1] Norman does not include the PSI in his Appendix.

Norman reminds us that he accepted responsibility when initially stopped by the officer, he apologized to the victim, and the bicycle was returned to the victim. He then argues,[2] without citation to authority, that the "appropriate sentence should have been the minimum sentence of six (6) months," and asks that we remand with an order that such sentence be imposed. Norman's Br. at 3. We are not persuaded.

We have the authority to revise a sentence if, "after due consideration of the trial court's decision," it is found that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The burden is on the defendant to persuade the reviewing court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Norman stole a bicycle without permission, committing an offense that includes the intent to deprive the owner of the value or use of the property. *See* Ind. Code § 35-43-4-2. As the State observed, whether Norman "was going to return the bicycle is of no consequence to the nature of the offense," inasmuch as the offense does not include an "intention to accomplish a permanent deprivation" of the property stolen. State's Br. at 6 (citing *Coff v. State*, 483 N.E.2d 39, 43 (Ind. 1985)). Further, Norman's character is reflected by the following: he had two prior felony convictions and was still on parole for one of those convictions at the time he committed the instant offense. The gravity of these indications of poor character exceeds the minimally positive indication of his

[2] We remind Norman's counsel that the Appellant's Brief "shall contain" a "Summary of Argument," Ind. Appellate Rule 46, not a "Summary of the Issue." Norman's Br. at 4. Further, the argument itself must be "supported by cogent reasoning" and "supported by citations to the authorities . . . ." App. R. 46 (8)(a).

character shown by his having waived his right to a jury trial. Finally, that the value of the stolen bicycle was only $50.00 may well have been a consideration leading to the imposition of the one-year executed sentence. The advisory sentence for a class D felony is 1½ years. Thus, the sentence imposed is less than the advisory sentence. Given the nature of Norman's offense and his character, we do not find the one-year executed sentence to be inappropriate.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.